

Date: June 8, 2010

States: Texas/Arkansas

WHITE PAPER

SUBJECT: Is revenue generated from the sale of a permit for access to hunting lands leased under an open Wildlife grant attributable as program income from the grant related activities?

PURPOSE OF WHITE PAPER: Issues related to States that sell hunters' permits to gain access to leased lands for hunting opportunities then propose a grant to achieve the same objective.

BACKGROUND: On January 14, 2010, Texas Parks and Wildlife Department (TPWD) submitted a grant to Region 2 negotiate individual leases with landowners throughout the State to provide increased public hunting opportunities. Purchase of an Annual Public Hunting Permit (Permit) is required in order to gain access to the leased properties.

ISSUES: 1) We believe opening a grant for the sole purpose of leasing land for public hunting and requiring a Permit to access those lands creates a nexus between a portion of the Permit revenue and the open grant. A portion of the revenue generated from the sale of the Permit would be attributable to the grant as program income under 43 CFR 12.65. TPWD contacted Arkansas Game & Fish Commission who currently has an approved grant to acquire similar access leases for hunting opportunities. A separate Leased Lands Permit (LLP) is required to access each of those areas. Per Region 4, the revenue from the LLP had been treated as program income in prior grant segments; however, the current segment changed and now treats the permit fees as license revenue. WSFR Region 4 believes that 50 CFR 80.4(a)(1) allows for the revenue to be treated as license revenue rather than program income. Generally speaking, fees generated from the sale of licenses, tags, access permits, etc., are not directly attributable to an open WSFR grant, and consequently 50 CFR 80.4 "Diversion of license fees." would be solely applicable. However, in cases such as TPWD's, where a portion of the access permit revenue is directly attributable to an open grant, we do not agree with Region 4's determination. Protecting the TPWD's Permit fees as license revenue does not preclude them from being accounted for as program income under the proposed grant.

2) In 2007, TPWD had an audit finding where they claimed \$2.9 million in costs related to their public hunting program administered under a WSFR grant and sought \$1.5 million in WSFR reimbursements, while generating \$3.1 million in permit revenues for the public hunting program. Since the permit revenue of \$3.1 million was more than sufficient to fund the permit-related expenditures of \$2.9 million and 50 CFR 80.14 prohibits WSFR funds from being used to produce income, the costs were deemed unallowable and TPWD had to pay back the \$1.5 million. We are concerned that an auditor would view the proposed grant in a similar fashion. Currently, all revenue generated from the sale of the TPWD Permit is deposited in TPWD's protected license revenue account. Since the annual Federal share of the proposed grant is \$300,000 and a conservative estimate of annual Permit fees is \$1.4 million, it is conceivable that an auditor would determine that the Permit revenue is sufficient to fund the hunting leases, thus requiring TPWD to again reimburse the WSFR program.

CITATIONS:

43 CFR 12.65 Program income (a) General. Grantees are encouraged to earn income to defray program costs. Program income includes income from fees for services performed, from the use or



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Washington, D.C. 20240



JUL 28 2010

In Reply Refer To:
FWS/WSFR/AWSR 045204

Memorandum

To: Regional Director, Region 2
From: Assistant Director, Wildlife and Sport Fish Restoration Program
Subject: Determination on Wildlife Restoration Grant Issue Texas Parks and Wildlife Department

Hannibal Bolton

This is in response to your memorandum, dated June 9, 2010, which requested a Wildlife and Sport Fish Restoration (WSFR) Program determination on revenue generated from the sale of a permit to access hunting on private lands leased through a proposed Pittman-Robertson Wildlife Restoration (WR) Program grant. Your question is whether or not the permit fees should be reported by Texas Parks and Wildlife Department (TPWD) as Program Income for the open period of a grant.

Hunting access fees are a category of license revenue (50 CFR 80.4), but these fees can also be classified as Program Income if the fees meet certain conditions. According to 43 CFR 12.65, Program Income is the gross income received by the grantee directly generated by a grant supported activity or earned only as a result of the grant agreement during the grant period. Program Income includes fees from the use of real property acquired with grant funds (43 CFR 12.65). Unless there is a documented exceptional circumstance, when lands are leased or purchased with WR funds, the fees charged to access those leased or acquired lands are reported as Program Income during the grant period. If the grant is closed, as outlined in 522 FW 19.9, the revenue can be treated as either license revenue or used as additional funding for purposes consistent with the grant or program that generated the income.

My determination, based on the grant proposal and other information you provided, is that the revenue generated by the Annual Public Hunting Permit is directly related to the grant-supported activity of leasing identified private lands for public hunting. Therefore, the permit revenue should be reported as Program Income for the grant period. If there are compelling exceptional circumstances affecting this determination, such as the permit also provides access to significant acres leased or acquired through other sources, TPWD should resubmit grant documentation with supporting justification. The Fish and Wildlife Service (FWS) has discretion to negotiate an equitable Program Income resolution if the situation warrants. Any negotiated resolution must be documented in the grant approval conditions.

TAKE PRIDE
IN AMERICA



Mike Piccirilli/R4/FWS/DOI
08/13/2010 08:16 AM

To Joyce Johnson/AMBS/R9/FWS/DOI@FWS
cc glen_salmon@fws.gov, "Hannibal Bolton"
<hannibal_bolton@fws.gov>
bcc

Subject Re: Fw: DTS # 045204 - Texas and Program Income

History: This message has been forwarded.

Joyce

Thank you, you all make this very clear and I agree it should be Program Income. In the Texas grant it's very clear it's a private land hunting access program and we understood hunting is the only activity allowed on the leased land. In the Arkansas case it again is leased land however many activities are permitted (bird watching, hiking, wildlife watching, biking, camping, and hunting). A hunting license and WMA stamp is required to hunt and we determined this revenue is License revenue. Only a WMA stamp is required to access the area and authorize the other activities (bird watching, hiking, wildlife watching, biking, camping.) We determined this revenue is program income. Arkansas has demonstrated to us that they can separate the revenue.

Mike

Joyce Johnson/AMBS/R9/FWS/DOI



Joyce
Johnson/AMBS/R9/FWS/DOI
08/12/2010 03:14 PM

To Mike Piccirilli/R4/FWS/DOI
cc glen_salmon@fws.gov, "Hannibal Bolton"
<hannibal_bolton@fws.gov>
Subject Fw: DTS # 045204 - Texas and Program Income

Hi Mike - Am a bit slow in forwarding this to you, in part because wasn't sure that the attached has relevance to R4 and an Arkansas grant (W-89-6). The AR grant was not considered in the decision re: the TX issue, though Texas Parks and Wildlife Department (TPWD) felt it was very similar to their situation. I can give you the background on the TPWD Program Income discussions in the WO, but if you need more information on the TPWD grant, Bob Anderson is Acting for Steve Robertson for the rest of August.



045204 Signed M Texas and Program Income.pdf

Memorandum

TO: Regional Director, Region 2

From: Assistant Director, Wildlife and Sport Fish Restoration Program

Subject: Determination on Wildlife Restoration Grant Issue – Texas Parks and Wildlife Department

This is in response to your memorandum, dated June 9, 2010, which requested a Wildlife and Sport Fish Restoration (WSFR) Program determination on revenue generated from the sale of a permit to access hunting on private lands leased through a proposed Pittman-Robertson Wildlife Restoration (WR) Program grant. Your question is whether or not the permit fees should be reported by Texas Parks and Wildlife Department (TPWD) as Program Income for the open period of a grant.

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My determination, based on the grant proposal and other information you provided, is that the revenue generated by the Annual Public Hunting Permit is directly related to the grant-supported activity of leasing identified private lands for public hunting. Therefore, the permit revenue should be reported as Program Income for the grant period. If there are compelling exceptional circumstances affecting this determination, such as the permit also provides access to significant acres leased or acquired through other sources, TPWD should resubmit grant documentation with supporting justification. Regional Directors and WSFR Division Chiefs have discretion to negotiate an equitable Program Income resolution if the situation warrants. Any negotiated resolution must be documented in the grant approval conditions.

There is also a related WSFR Program concern. The grant documentation does not demonstrate that the proposed income-producing activity is incidental to the accomplishment of the grant objective. The WR Program is not intended to support activities that produce Program Income. In 50 CFR 80.14, it states that WR funds "cannot be used for the purpose of producing income. However, income-producing activities incidental to accomplishment of approved purposes are allowable. Income derived from such activities must be accounted for in the project records and disposed of as directed by the Director." A January 2007 report by the Office of the Inspector General (OIG) found that a similar Texas grant, open during the audit period of 2002 through 2004, generated sufficient permit revenue to cover the permit-related expenditures, including the leases, and therefore, grant costs were not allowable. In 2007, the Fish and Wildlife Service and TPWD concurred with the OIG finding and TPWD returned \$1.5

million to the WR Program. It is recommended that TPWD address the identified issue of whether permit revenue is incidental to the allowable costs in the grant proposal. Also in the 2007 report, the OIG recommended that the Fish and Wildlife Service evaluate whether the Texas public hunting program is appropriate for WR funding.

The information provided by TPWD is not sufficient to evaluate whether the Texas public hunting program is appropriate for WR funding. The Region is advised to request a programmatic evaluation and to ascertain the applicability of WR funding for any proposal relative to the entirety of the Texas public hunting program before approving grants similar to the one addressed in the 2007 OIG report.

As you indicated, eligible wildlife management activities include public hunting opportunity and the proposed TPWD activity could be funded through the WR program. However, the Expected Results and Benefits, Approach, and Estimated Cost sections of the TPWD documentation were insufficient for this office to determine if the proposal was substantial in character and design, as required for any WR Program funding. Also of concern was the statement in the Estimated Costs section that the public hunting program in Texas was designed to benefit both hunters and agricultural producers. The premise of WR is a user pay-user benefit program funded through excise taxes on firearms, archery equipment and ammunition with those additional manufacturing costs passed on to hunters. The statement should clarify that leases will be negotiated at fair market value for the primary benefit of hunters.

If you have any questions or concerns, please contact Joyce Johnson, Chief, Policy and Programs Division, at 703-358-2231.



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Leased Lands Permits

- 1 - Big Timber WMA
- 2 - Casey Jones WMA
- 3 - Cherokee WMA
- 3A - Jim Kress WMA
- 4 - Gum Flats WMA
- 5 - Lafayette County WMA
- 6 - Provo WMA

The AGFC leases hunting rights for the public on large blocks of private land in areas where they cannot purchase the land or a hunting easement outright. To help offset the cost of these leases, hunters, anglers and campers using these special WMAs must purchase a \$20 annual use permit for each leased land they use.

Recreational use of all ATVs, motorcycles, bicycles and ORVs is prohibited on Cherokee and Jim Kress WMAs. Hunters in possession of a valid Cherokee or Jim Kress leased lands permit are allowed to use ATVs, motorcycles or bicycles on open, maintained roads during an open hunting season while traveling to or from a camp site or hunting location only. Youths under 16 are not required to have a permit. Maps of leased properties are provided when permits are purchased.

Hunters must get permission from landowners to travel through neighboring private lands bordering leased land WMAs.



Related Documents

| Title | Type | Posted |
|-----------------|------|------------|
| Leased Land Map | PDF | 05/19/2010 |

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not required to possess their own permit to hunt or fish, however they must hunt under the supervision of an authorized supervising adult (age 18 or older) who possesses the required permit. See the **Youth Hunting Information and Regulations** page and individual unit maps for youth season dates and bag limits.

A **Limited Public Use (LPU) Permit** is also available. The LPU Permit allows an adult to enter, camp, birdwatch, hike, etc. on designated public hunting lands, but they may not hunt or possess firearms or archery equipment.

To enter any of the public hunting lands listed in this publication and participate in any of the authorized activities at designated times and units, a person must possess one of the appropriate permits unless it is an activity, time period, or unit for which no permit is required.

To locate a certain unit of public hunting lands, refer to the **Map Booklet** and select a specific unit you wish to visit.

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Last modified: September 9, 2010, 3:58 pm

6-8 WMA

QUESTION FROM R2: How should the Texas Parks and Wildlife Department treat revenue generated by the sale of permits to hunt on lands leased with Wildlife Restoration grant funds?

ANSWER: The AD-WSFR responded on July 28, 2010, that Texas's fees to hunt on lands acquired with grant funds are license revenue, but should also be reported as program income for the grant period.

BACKGROUND:

LICENSE FUNDS USED AS MATCH: Revenue from the sale of permits to hunt on lands leased through a grant where hunting-license funds were used as match also qualifies as hunting-license revenue. It does not matter when the revenue was generated. The State agency must use license revenue for the administration of the State fish and wildlife agency. License revenue may also qualify as program income if generated during the grant period.

LICENSE FUNDS NOT USED AS MATCH: If hunting license funds were not used as match for the grant that funded the lease, the status of the revenue depends on whether it was generated during or after the grant period.

DURING THE GRANT PERIOD: Revenue directly generated during the grant period by a grant-supported activity is program income if generated only as a result of the grant and if it was incidental to achieving the purposes of the grant. The grantee must use program income to:

- (1) Reduce the Service's and grantee's contributions for the grant, but in the Wildlife Restoration program any Federal funds saved are available for future grants to the grantee;
- (2) Add to the grant funds to help achieve the purposes of the grant -- if the State agency requests this alternative; or
- (3) Meet the grant's match requirements -- if the State agency justifies use of this alternative and if WSFR approves it.

AFTER THE GRANT PERIOD: Revenue from the sale of access fees to real property leased with grant funds may be treated as:

- (1) Hunting-license revenue, which must be used for the administration of the State fish and wildlife agency; or
- (2) Additional funding for purposes consistent with the grant or the program that generated the income.

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Public Hunting Links:

- Mission Lake Hunts Cancelled
- Changes and corrections to the Public Hunting Map Booklet (Nixon) and Drawn Hunts
- Big Time Texas Hunts
- Youth Hunting
- Walk-in Hunts: Annual Public Hunting Permit
- Public Hunting and Access to Texas Parks and Wildlife Lands
- Public Hunts on State Park Lands
- Statistics: Public Hunting by Special Permit
 - 2009-2010 Statistics
 - 2008-2009 Statistics
 - 2007-2008 Statistics
- Drawn Hunts
 - How to Use the Public Hunt Drawing System
 - Special Drawing and Regular Permit Hunting Opportunities.
 - ↓ (PDF 4.4 MB)
 - Application for Special Hunting Permit - All hunts.
 - ↓ (PDF 183.1 KB)

Walk-in Hunts: Annual Public Hunting Permit

2010-2011 Hunting Maps, Drawn Hunts Now Online

Mission Lake Hunts Cancelled for September 10-11

Texas Parks and Wildlife Department administers a comprehensive public hunting program. The Public Hunting Program, begun in 1954, offers the opportunity to participate in low cost, family oriented, spontaneous hunts for a multitude of wildlife species on diverse lands of substantial acreage as well as a variety of other outdoor recreational activities.

Each year, Texas Parks & Wildlife Department publishes maps of land open for public hunting. As it becomes available, here you'll find information on over 1 million acres of public hunting lands. Access is provided by either of two types of annual permits: the Annual Public Hunting (APH) Permit which allows full privileges including hunting, fishing, camping, hiking and other non-consumptive uses and the Limited Public Use (LPU) Permit which also provides access for recreational uses and fishing.

The Annual Public Hunting (APH) Permit is valid from September 1 through August 31 of the following year, and allows an adult access to designated public hunting lands. Hunting is allowed for small game, turkey, white-tailed deer, exotics, predators, furbearers, and fishing without having to pay daily permit fees and in most instances, without having to be selected in a drawing. Having purchased the appropriate Texas hunting licenses and stamps, holders of an APH Permit may take children under age 17 hunting free of charge on these public hunting lands, thereby making them aware of the need for proper management of wildlife resources and introducing them to the sport hunting ethic.

Youth (under age 17) are required to have a Texas hunting license but are

Jan 2007 TX had a grant add then to public lands program ↓ dove lease program even that hunting would access looks

"annual public hunting permit" 9/21/2010